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16 UNITED BEHAVIORAL HEALTH

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 DAVID WIT, et al.,

21 Plaintiffs,

22 v.

23 UNITED BEHAVIORAL HEALTH,

24 Defendant.

Case No. 14-CV-02346-JCS
Related Case No. 14-CV-05337-JCS

DEFENDANT UNITED BEHAVIORAL
HEALTH'S UNOPPOSED
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE A SUR-REPLY

Hon. Joseph C. Spero

UBH'S UNOPPOSED ADMIN. MOT. FOR LEAVE
TO FILE SUR-REPLY BRIEF;
CASE NOS. 3:14-CV-02346-JCS, 3:14-CV-05337-JCS

1 **GARY ALEXANDER, et al.,**
2 Plaintiffs,
3 v.
4 **UNITED BEHAVIORAL HEALTH,**
5 Defendant.

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MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Civil Local Rule 7-11 and the Court’s February 21, 2021 Order Granting
Stipulation Extending Briefing Schedule for Plaintiffs’ Motion for Attorneys’ Fees and Expenses,
Defendant United Behavioral Health (“UBH”) hereby moves for leave to file a Sur-Reply in
opposition to Plaintiffs’ Motion for Attorneys’ Fees and Expenses. (ECF No 543.) Specifically,
UBH seeks to file a Sur-Reply on or before March 22, 2021 to address Plaintiffs’ request for
expenses based on the approximately 7,100 pages of evidence submitted by Plaintiffs with their
Reply Brief in support of their Motion for Attorneys’ Fees and Expenses. Plaintiffs do not oppose
UBH’s request or the relief sought herein.

Courts regularly grant leave to file sur-replies under such circumstances. “If a party raises a new argument or presents new evidence in a reply brief, a court may consider these matters only if the adverse party is given an opportunity to respond.” *See Banga v. Experian Info. Sols., Inc.*, No. C 09-04867 SBA, 2013 WL 5539690, at *3 (N.D. Cal. Sept. 30, 2013). Accordingly, “[s]urreplies are often granted when a new argument or new evidence is presented in a reply brief,” especially where “the content of the Surreply is discrete and will not necessitate further briefing.” *S.E.C. v. Goldstone*, No. CIV 12-0257 JB/LFG, 2014 WL 6065611, at *2 (D.N.M. Nov. 4, 2014); *see also Clark v. Bumbo Int’l Tr.*, No. 15 C 2725, 2017 WL 3704825, at *3 n.5 (N.D. Ill. Aug. 28, 2017) (“Because the surreply is brief, confined to the two discrete issues, and responds appropriately to the reply, the Court grants Bumbo’s motion for leave to file the surreply.”). Compare *id.*, with *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 857–58 (N.D. Ill. 2015) (denying leave where the proposed sur-reply simply “respond[ed] (again) to [the defendant’s] core arguments,” “spen[t] seven of the eight pages . . . responding to” those core arguments, and where the defendant “included this argument in its opening brief”).

UBH's proposed Sur-Reply checks all of these boxes. It is undisputed that Plaintiffs submitted voluminous amounts of new evidence with their Reply brief. (*See* ECF No. 542.) UBH has not yet had a fair opportunity to address this new evidence and related arguments. UBH will be prejudiced if the Court considers this evidence without affording UBH the chance to respond to it. "Such a result would be unfair." *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996); *see*

1 also *United States v. Venture One Mortg. Corp.*, No. 13-CV-1872 W (JLB), 2015 WL 12532139,
2 at *2 (S.D. Cal. Feb. 26, 2015) (“If the Court is to consider the new evidence and arguments in
3 Defendant’s reply brief, it must give Plaintiff an opportunity to respond.”). In light of the
4 foregoing, UBH respectfully requests that the Court grant UBH leave to file its Sur-Reply on or
5 before March 22, 2021 to address the new evidence filed in support of Plaintiffs’ request for
6 expenses.

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8 || Dated: March 12, 2021

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UBH'S UNOPPOSED ADMIN. MOT. FOR LEAVE
TO FILE SUR-REPLY BRIEF;
CASE NOS. 3:14-CV-02346-JCS, 3:14-CV-05337-JCS